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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,031	05/31/2001	Mary Lucille DeLucia	KCC-15,208	8168

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EXAMINER

THOMPSON, CAMIE S

ART UNIT	PAPER NUMBER
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1774

2

DATE MAILED: 04/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

116

Office Action Summary

Application No.

09/871,031

Applicant(s)

DELUCIA ET AL.

Examiner

Camie S Thompson

Art Unit

1774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

1. Applicant's amendment and accompanying remarks filed on January 30, 2003 have been acknowledged.
2. Examiner acknowledges amended claims 1, 16, 17 and 20.
3. The rejection of claim 17 under 35 USC 112, second paragraph is withdrawn due to applicant's amended claim 17.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1-4, 6-8, 10 and 13-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Jones et al., U.S. Patent Number 6,420,625.

Art Unit: 1774

Jones discloses a laminate that is liquid impermeable that comprises at least three layers wherein the first layer comprises an apertured film and a nonwoven web and can be arranged in any sequence and can be used as a personal care product such as a diaper or sanitary napkin, which can act as a fastener, as per instant claims 1-3, 9 and 14 (see column 4, lines 29-53 and column 6, lines 10-14). The reference also discloses that the first layer containing the apertured film has an underside that contains voids as per instant claim 1 (see column 13, lines 43-54). In addition, the reference discloses that the nonwoven material can be comprised of spunbound fibers as per instant claims 4 and 11 (see column 7, lines 16-64). Jones discloses that the apertured film layer may be of any desired diameter as per instant claim 6 (see column 6, lines 25-29). The basis weight for the first layer containing the apertured film and the nonwoven web is from about 0.25 ounces per square yard (osy) to about 5.0 osy as per instant claims 7 and 8 (see column 5, lines 9-14). Adhesive bonding is disclosed in the reference as a bonding technique that is used to attach the apertured film to the nonwoven as per instant claim 13 (see column 5, lines 1-8).

6. Claim 16 is rejected under 35 U.S.C. 102(e) as being anticipated by Smith, III et al., U.S. Patent Number 6,267,975.

Smith discloses personal care articles comprised of a composite material that has layers and the first layer has a plurality of apertures (see column 5, lines 23-50). Additionally, the reference discloses that the composite material comprise one or more compartments that result from the bonding of the substrate layers to one another (see column 27, lines 49-51). The reference meets all of the limitations of claim 16.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-5, 10 and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson et al., U.S. Patent Number 5,643,240 in view of Jones et al., U.S. Patent Number 6,420,625.

Jackson discloses a personal care product such as a diaper that is a combination of a an apertured film and a lofty fibrous nonwoven web separation layer as per instant claims 1-3, 9 and 14 (see column 3, lines 32-35 and abstract). The reference discloses that the film may be hydrophobic as per instant claim 5 (see column 4, lines 5-6). In addition, Jackson discloses that the fibers produced in the nonwoven web are spunbound as per instant claims 4 and 10 (see column 6, lines 26-46). The apertured film is adhesive bonded to the nonwoven separation layer as described in Jackson in column 6, lines 18-25. The Jackson reference does not disclose voids within the film and nonwoven combination as per instant claim 1. Jones teaches a laminate that is liquid impermeable that comprises at least three layers wherein the first layer comprises an apertured film and a nonwoven web and can be arranged in any sequence and can be used as a personal care product such as a diaper or sanitary napkin as per instant claims 1-3, 9 and 14(see column 4, lines 29-53 and column 6, lines10-14). Additionally, the reference also discloses that the first layer containing the apertured film has an underside that contains voids as per instant claim 1 (see column 13, lines 43-54). It would have been obvious to one of ordinary skill in the art to

have voids in the substructure in order to have a breathable, apertured film as discussed by Jones in column 13, lines 36-63.

9. Claims 1, 9, 11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones et al., U.S. Patent Number 6,420,625 in view of Huntoon et al., U.S. Patent Number 5,906,879.

Jones discloses a laminate that is liquid impermeable that comprises at least three layers wherein the first layer comprises an apertured film and a nonwoven web and can be arranged in any sequence and can be used as a personal care product such as a diaper or sanitary napkin as per instant claims 1-3 and 14 (see column 4, lines 29-53 and column 6, lines 10-14). Additionally, the reference also discloses that the first layer containing the apertured film has an underside that contains voids as per instant claim 1 (see column 13, lines 43-54). The reference does not disclose that the nonwoven web is three-dimensional or thermoformed as per instant claims 9 and 11. Huntoon teaches a 3 dimensional thermoformed bicomponent fiber nonwoven material that is suitable for personal care products such as diapers and sanitary napkins (see abstract). It would have been obvious to one of ordinary skill in the art to use a three dimensional thermoformed material is to ensure resiliency, strength and cloth-like properties as shown by Huntoon in column 2, lines 16-62.

10. Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith, III et al., U.S. Patent Number 6,267,975.

Smith discloses personal care articles comprised of a composite material that has layers and the first layer has a plurality of apertures (see column 5, lines 23-50). Additionally, the reference discloses that the composite material comprise one or more compartments that result from the bonding of the substrate layers to one another (see column 27, lines 49-51). Smith does not disclose the cross sectional type of the compartments or the height and width of the compartments as per instant claims 17-19. However, these are optimizable features. Height and width as well as the cross sectional area of the compartment controls the fluid flow. Discovery of optimum values of a result effective variable involves only routine skill in the art in re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA). Also, it would have been obvious to one of ordinary skill in the art to have a triangular cross section for the compartments so that the fluid may pass away from the wearer's skin. It would have been obvious to one of ordinary skill in the art to have the height for each compartment be about 0.1 cm to about 2.0 cm and the width for each compartment be about 0.1 cm to about 2.0 cm so that fluids can pass readily through the material.

11. Claims 20-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanzer et al., U.S. Patent Number 5,853,403 in view of Jones et al., U.S. Patent Number 6,420,625.

Tanzer discloses a composite material that can be used as an absorbent article wherein the material comprises a liner with a plurality of apertures and is bonded to a nonwoven dam as per instant claim 20 (see column 15, lines 47-68). The reference also discloses that the substructure can be pleated as per instant claim 22 (see column 15, lines 41-45). Additionally, the reference discloses that there is an outer cover bonded to the liner and there is a backsheet layer, absorbent core, positioned between the outer cover and liner (see column 20, lines 1-64). Absorbent

Art Unit: 1774

articles such as adult incontinence garments, diapers, feminine napkins, children's training pants and the like are disclosed as per instant claims 23-29 in column 5, lines 13-19. Tanzer does not disclose voids in the substructure of the composite material. Jones teaches a laminate that is liquid impermeable that comprises at least three layers wherein the first layer comprises an apertured film and a nonwoven web and can be arranged in any sequence and can be used as a personal care product such as a diaper or sanitary napkin as per instant claims 1-3, 9 and 14 (see column 4, lines 29-53 and column 6, lines 10-14). Additionally, the Jones reference discloses that the first layer containing the apertured film has an underside that contains voids as per instant claim 1 (see column 13, lines 43-54). It would have been obvious to one of ordinary skill in the art to have voids in the substructure in order to have a breathable, apertured film as discussed by Jones in column 13, lines 36-63.

Response to Arguments

12. Applicant's arguments filed January 30, 2003 have been fully considered but they are not persuasive. Applicant argues that newly amended claims 1 and 20 require a liquid permeable composite material. Applicant discloses that the instant claim composite material has a first layer that includes apertures for accommodating passage of fluids through the composite material. However, applicant claims that the composite material of claim 20 is used in fluid absorbing articles such as a diaper or a feminine hygiene product. Applicant does not have any claims to the second or subsequent layers of the composite material. The laminate structure of the Jones reference has an apertured film layer and a nonwoven web, which are arranged in any sequence and can be used as a personal care product such as those claimed by the applicant. The

apertured film layer of the Jones reference inherently makes the layer permeable. Therefore, the Jones reference is an impermeable composite material but yet has a permeable layer. Applicant has not provided claims for the second or subsequent layers of the composite material. Applicant claims that the first layer comprises voids for accommodating fluids. Therefore, applicant has a composite material with permeable layers and possibly impermeable layers – same as Jones reference.

Although Smith does not disclose using triangular cross sections, the reference does disclose a composite material that comprises one or more compartments for accommodating the passage of fluids. Both the instant application and the Smith reference disclose personal care articles comprised of a composite material that has layers and the first layer has a plurality of apertures and compartments. Smith does not disclose the type of compartments; however, the composite material of Smith performs and has the same structure as that of the instant application.

Applicant argues that the Jackson reference does not teach or suggest voids within the film and nonwoven layer. Both the Jackson and Jones references disclose a personal care product such as a diaper wherein each has an apertured film and a fibrous nonwoven web layer that is used to accommodate the passage of fluids. Both references are analogous art and the reason to combine references is not without motivation.

Applicant argues that the Huntoon reference does not teach limitations of the present invention. Both the Huntoon and Jones references disclose a laminate that comprises a first layer that has an apertured film and a nonwoven web and can be arranged in any sequence and can be used as a personal care product such as a diaper. Both references are analogous art and the reason to

Art Unit: 1774

combine references is not without motivation because both references disclose a composite material with a first layer substructure that is used for accommodating the passage of fluids. Applicant argues that the Tanzer reference does not teach or suggest voids defined by the first layer. Tanzer discloses a composite material that can be used as an absorbent article wherein the material comprises a liner with a plurality of apertures and a nonwoven web. The presently claimed invention as well as the Tanzer and Jones references all include a composite material that has a first layer that comprises an apertured film and a nonwoven web. All three have a substructure that is used for accommodating the passage of fluids; therefore, Tanzer and Jones are analogous art and motivation to combine.

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 1774

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Camie S. Thompson whose telephone number is (703) 305-4488. The examiner can normally be reached on Monday through Friday from 7:30 am to 4:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia H. Kelly, can be reached at (703) 308-0449. The fax phone numbers for the Group are (703) 872-9310 {before finals} and (703) 872-9311 {after finals}.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

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Cynthia H. Kelly